

REMARKS

[0002] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. The status of the claims is as follows:

- Claims 1, 5, 6, 8-16, 25-33 36 and 37 are currently pending.
- Claims 5, 6, 32, 33, 36, and 37 are canceled herein.
- Claims 1 and 25 are amended herein.

[0003] The amendments presented herein are fully supported by the specification and do not introduce any new matter.

Cited Documents

[0004] The following documents have been applied to reject one or more claims of the Application:

- **Ellis:** Ellis, et al., U.S. Patent Application Publication No. 2005/0283800
- **Kikinis:** Kikinis, et al., U.S. Patent Application Publication No. 2008/0282311
- **Hassell:** Hassell, et al., U.S. Patent Application Publication No. 2007/0033615
- **D'Souza:** D'Souza, et al., U.S. Patent Application Publication No. 2006/0117348
- **Jerding-616:** Jerding, et al., U.S. Patent No. 6,792,616
- **Jerding-982:** Jerding, U.S. Patent No. 6,738,982
- **Lorkovic:** Lorkovic, U.S. Patent Application Publication No. 2004/0117835
- **Paz:** Paz, et al., U.S. Patent Application Publication No. 2002/0053075

- **Knudson-823:** Knudson, U.S. Patent No. 7,254,823
- **Hoarty:** Hoarty, et al., U.S. Patent No. 6,305,020
- **Houghton:** Houghton, et al., U.S. Patent Application Publication No. 2005/0021609
- **Knudson-577:** Knudson, et al., U.S. Patent No. 6,526,577

Claims 1, 5, 6, and 8 Are Non-Obvious Over Ellis, Kikinis, Hassell, D’Souza, Jerding-616, Jerding-982, Lorkovic, and Paz

[0005] Claims 1, 5, 6, and 8 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Ellis in view of Kikinis in view of Hassell in view of D’Souza in view of Jerding-616 in view of Jerding-982 in view of Lorkovic and further in view of Paz. Applicant respectfully traverses the rejection.

[0006] Claims 5 and 6 are canceled herein, rendering the rejection of these claims moot.

Independent Claim 1

In light of the amendments presented herein, Applicant submits that the rejection of independent claim 1 is moot. Specifically, the cited combination of references does not teach or suggest at least, “in response to the user-submitted selection of the particular media asset, a virtual tuner executed on the client device selecting an application for presenting the particular media asset,” as recited in claim 1, as amended herein.

[0007] Accordingly, Applicant respectfully requests that the rejection of this claim be withdrawn.

Dependent Claim 8

[0008] Claim 8 depends from independent claim 1. As discussed above, claim 1 is allowable over the cited documents. Therefore, claim 8 is also allowable over the cited documents of record for at least its dependency from an allowable base claim. This claim may also be allowable for the additional features that it recites.

Claims 9, 11, 13, 14, and 16 Are Non-Obvious Over Knudson-823 and D'Souza

[0009] Claims 9, 11, 13, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza. Applicant respectfully traverses the rejection.

Independent Claim 9

[0010] With regard to claim 9, Applicant respectfully submits that the Office has not met its burden to show obviousness. Claim 9 recites, in part:

- receiving, by the virtual tuner, a selection made from a plurality of content using an EPG that is output by the client...;
- choosing, by the virtual tuner, one or more of the plurality of applications that, when executed, provide the selected content represented by the EPG, wherein the choosing is independent of any application identifying information originating from a computer distinct from the client; and
- managing, by the virtual tuner, execution of the chosen one or more applications to output the selected content.

[0011] Knudson-823 describes an interactive program guide representing multiple channels over which media content is available, wherein each of the channels carries programming of primarily one media type. Thus, there are television channels, digital audio channels, games channels, video-on-demand channels, data channels, etc. (*Knudson-823*, column 6, lines 12-15.) The program guide may provide the user with the option of creating a favorites channel list that stores channels designated as favorites in a single list, without regard to media type. (*Knudson-823*, column 6, line 64-column 7, line 2.) Figure 10 illustrates a selection screen wherein the program guide displays program listings for channels of available media types. Channel selection of any channel, regardless of favorite status or media type, is available from this screen. (*Knudson-823*, column 9, lines 5-9.)

[0012] Knudson-823 describes an EPG through which a user can select content from a plurality of types of media content, and the selected content is presented according to its media type. However, as recognized by the Office (see Office Action, page 30), Knudson-823 does not teach a virtual tuner that chooses an application that is appropriate for presenting the selected media content, and manages execution of the chosen application.

[0013] To remedy the deficiency of Knudson-823 in this regard, the Office cites D'Souza, stating, "it would have been obvious to a person of ordinary skill in the art to modify Knudson's system to include a virtual tuner executed on a client...as taught by D'Souza, for the advantage of allowing a variety of desired content to be launched and played to the user independently by the system, providing a more intuitive, versatile, and robust system having greater control and management over execution of

content.” (*Office Action*, pages 31-32.) Applicant respectfully disagrees with the Office’s motivation for combining D’Souza with Knudson-823.

[0014] Applicant respectfully submits that the Office has not identified an objective reason to combine the references. As stated in KSR at 418:

[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

[0015] The Supreme Court has held that analysis and a determination of a reason to combine known elements in the manner claimed should be explicit. *KSR*, at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)). “Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *KSR*, at 420. In addition, “familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *Id.* However, the Court also stated that

a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. ... it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks

long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known. (*KSR*, at 418-419.)

[0016] In *KSR* the court reiterated the caution against hindsight reasoning from *Graham*:

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *Graham*, 383 U.S., at 36 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "guard against slipping into use of hindsight" (quoting *Monroe Auto Equip. Co. v. Heckethorn Mfg. & Supply Co.*, 332 F.2d 406, 412 (CA6 1964))). Rigid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it. (*KSR*, at 421.)

[0017] As stated above, the Office gives the following reason to combine Knudson-823 and D'Souza:

it would have been obvious to a person of ordinary skill in the art to modify Knudson'823s system to include a virtual tuner executed on a client...as taught by D'Souza, for the advantage of allowing a variety of desired content to be launched and played to the user independently by the system, providing a more intuitive, versatile, and robust system having greater control and management over execution of content

[0018] Applicant disagrees with the rationale stated by the Office. While the reason for a combination need not be explicit in the cited documents, the articulated reasoning must have a rational underpinning to support the legal conclusion of obviousness.

Without using the claim as a roadmap, no need or problem known in the field and

addressed by the instant application provides a reason to combine Knudson-823 and D'Souza.

[0019] The Office's statement that the combination would provide, "the advantage of allowing a variety of desired content to be launched and played to the user independently by the system, providing a more intuitive, versatile, and robust system having greater control and management over execution of content," is flawed in that Knudson-823 already allows a variety of desired content to be launched and played to the user independently by the system. Because Knudson-823 already provides this functionality, a suggestion that Knudson-823 lacks that functionality is inherently flawed.

[0020] Accordingly, a system according to Knudson-823 does not suggest a need or problem known in the field that would be solved by the teachings of D'Souza. In fact, Knudson-823 does not lack the functionality that the Office alleges would result from combining the teachings of D'Souza and Knudson-823. Thus there is no objective evidence that the combination of Knudson-823 and D'Souza would have been obvious to a skilled artisan at the time that the instant application was filed.

[0021] Furthermore, Applicant submits that D'Souza does not teach or suggest, "choosing, by the virtual tuner, one or more of the plurality of applications that, when executed, provide the selected content represented by the EPG, wherein the choosing is independent of any application identifying information originating from a computer distinct from the client." For example, as shown in Fig. 5, and described in paragraph [0040], the system of D'Souza presents a "surf guide" in response to a user input while viewing media content. The surf guide provides details about the current media content, and also includes a graphical control that allows the user to access editorial

content items. When the user selects the editorial content graphical control, the presentation software displays an editorial content index listing the available editorial content items. From there, the user can select any of the listed editorial content items. (D'Souza, paragraph [0041]).

[0022] The link to the editorial content index is included as part of a media content listing in the surf guide. However, the editorial content itself is not represented in an EPG. Rather, the EPG includes a link to an index from which the editorial content may then be accessed. As such, there is no suggestion in D'Souza that a virtual tuner chooses an application based on content selected from an EPG. Rather, the content is selected from a content index, which is separate from the EPG.

[0023] Consequently, the combination of Knudson-823 and D'Souza is improper, and thus cannot be relied upon to teach or suggest all of the elements and features of this claim, and D'Souza does not teach or suggest the features for which it is being relied. Accordingly, Applicant respectfully requests that the rejection of this claim be withdrawn.

Dependent Claims 11, 13, 14, and 16

[0024] Claims 11, 13, 14, and 16 each depend from independent claim 9. As discussed above, claim 9 is allowable over the cited documents. Therefore, claims 11, 13, 14, and 16 are also allowable over the cited documents of record for at least their dependency from an allowable base claim. These claims may also be allowable for the additional features that each recites.

Claim 10 Is Non-Obvious Over Knudson-823, D'Souza, and Hoarty

[0025] Claim 10 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza and further in view of Hoarty. Applicant respectfully traverses the rejection.

Dependent Claim 10

[0026] Claim 10 depends from independent claim 9. As discussed above, claim 9 is allowable over the combination of Knudson-823 and D'Souza. Hoarty does not remedy the deficiency of Knudson-823 and D'Souza with respect to claim 9. Therefore, dependent claim 10 is also allowable over the cited documents of record for at least its dependency on an allowable base claim. Additionally, this claim may also be allowable for the additional features that it recites.

Claim 12 Is Non-Obvious Over Knudson-823, D'Souza, and Jerding-982

[0027] Claim 12 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza and further in view of Jerding-982. Applicant respectfully traverses the rejection.

Dependent Claim 12

[0028] Claim 12 depends from independent claim 9. As discussed above, claim 9 is allowable over the combination of Knudson-823 and D'Souza. Jerding-982 does not remedy the deficiency of Knudson-823 and D'Souza with respect to claim 9. Therefore, dependent claim 12 is also allowable over the cited documents of record for at least its

dependency on an allowable base claim. Additionally, this claim may also be allowable for the additional features that it recites.

Claim 15 Is Non-Obvious Over Knudson-823, D'Souza, Houghton, and Hassell

[0029] Claim 15 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza in view of Houghton and further in view of Hassell. Applicant respectfully traverses the rejection.

Dependent Claim 15

[0030] Claim 15 depends from independent claim 9. As discussed above, claim 9 is allowable over the combination of Knudson-823 and D'Souza. Houghton and Hassell do not remedy the deficiency of Knudson-823 and D'Souza with respect to claim 9. Therefore, dependent claim 15 is also allowable over the cited documents of record for at least its dependency on an allowable base claim. Additionally, this claim may also be allowable for the additional features that it recites.

Claims 25 and 27-29 Are Non-Obvious Over Knudson-823, D'Souza, and Jerding-616

[0031] Claims 25 and 27-29 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza and further in view of Jerding-616. Applicant respectfully traverses the rejection.

Independent Claim 25

[0032] Claim 25 recites, in part:

- an electronic program guide (EPG) engine that is executable on the processor to provide an EPG for output on the output interface, wherein the EPG simultaneously displays a plurality of representations of said content for selection; and
- a virtual tuner that is executable on the processor to launch one or more of said plurality of applications in response to selection of said representations of said content

[0033] Regarding these features of claim 25, the Office relies on the combination of Knudson-823 and D'Souza, in a manner similar to that presented by the Office regarding claim 9. In fact, the Office alleges the same reason to combine the teachings of Knudson-823 and D'Souza, stating, "it would have been obvious to a person of ordinary skill in the art to modify Knudson'823s system...as taught by D'Souza, for the advantage of allowing a variety of desired content to be launched and played to the user independently by the system, providing a more intuitive, versatile, and robust system having greater control and management over execution of content." (*Office Action*, page 39.)

[0034] Accordingly, Applicant submits that the same reasoning regarding the purported combination of Knudson-823 and D'Souza presented above with reference to claim 9 applies with equal weight to claim 25. As such, the combination of Knudson-823 and D'Souza is improper with respect to claim 25.

[0035] The Office cites Jerding-616 as teaching a virtual tuner utilizing an application identification table that includes a listing of one or more applications to enable execution of each of said plurality of applications. However, Jerding-616 does not remedy the deficiencies of the purported combination of Knudson-823 and D'Souza.

[0036] Consequently, the combination of Knudson-823, D'Souza, and Jerding-616 is improper with regard to claim 25. Accordingly, Applicant respectfully requests that the rejection of this claim be withdrawn.

Dependent Claims 27-29

[0037] Claims 27-29 each depend from independent claim 25. As discussed above, claim 25 is allowable over the cited documents. Therefore, claims 27-29 are also allowable over the cited documents of record for at least their dependency from an allowable base claim. These claims may also be allowable for the additional features that each recites.

Claim 26 Is Non-Obvious Over Knudson-823, D'Souza, Jerding-616, and Jerding-982

[0038] Claim 26 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza in view of Jerding-616 and further in view of Jerding-982. Applicant respectfully traverses the rejection.

Dependent Claim 26

[0039] Claim 26 depends from independent claim 25. As discussed above, claim 25 is allowable over the combination of Knudson-823, D'Souza, and Jerding-616. Jerding-982 does not remedy the deficiency of Knudson-823, D'Souza, and Jerding-616 with respect to claim 25. Therefore, dependent claim 26 is also allowable over the cited documents of record for at least its dependency on an allowable base claim. Additionally, this claim may also be allowable for the additional features that it recites.

Claim 30 Is Non-Obvious Over Knudson-823, D'Souza, Jerding-616, and Knudson-577

[0040] Claim 30 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza in view of Jerding-616 and further in view of Knudson-577. Applicant respectfully traverses the rejection.

Dependent Claim 30

[0041] Claim 30 depends from independent claim 25. As discussed above, claim 25 is allowable over the combination of Knudson-823, D'Souza, and Jerding-616. Jerding-982 does not remedy the deficiency of Knudson-823, D'Souza, and Jerding-616

with respect to claim 25. Therefore, dependent claim 30 is also allowable over the cited documents of record for at least its dependency on an allowable base claim. Additionally, this claim may also be allowable for the additional features that it recites.

Claim 31 Is Non-Obvious Over Knudson-823, D'Souza, Jerding-616, and Hassell

[0042] Claim 31 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Knudson-823 in view of D'Souza in view of Jerding-616 and further in view of Hassell. Applicant respectfully traverses the rejection.

Dependent Claim 31

[0043] Claim 31 depends from independent claim 25. As discussed above, claim 25 is allowable over the combination of Knudson-823, D'Souza, and Jerding-616. Hassell does not remedy the deficiency of Knudson-823, D'Souza, and Jerding-616 with respect to claim 25. Therefore, dependent claim 31 is also allowable over the cited documents of record for at least its dependency on an allowable base claim. Additionally, this claim may also be allowable for the additional features that it recites.

Claims 32 and 37 Are Canceled

[0044] Claims 32 and 37 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Hassell in view of D'Souza and further in view of Jerding-616.

[0045] Claims 32 and 37 are canceled herein, rendering the rejection of these claims moot.

Claim 33 Is Canceled

[0046] Claim 33 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Hassell in view of D'Souza in view of Jerding-616 and further in view of Hoarty.

[0047] Claim 33 is canceled herein, rendering the rejection of this claim moot.

Claim 36 Is Canceled

[0048] Claim 36 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Hassell in view of D'Souza in view of Jerding-616 and further in view of Jerding-982.

[0049] Claim 36 is canceled herein, rendering the rejection of this claim moot.

Conclusion

[0050] For at least the foregoing reasons, all pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application.

[0051] If any issues remain that would prevent allowance of this application,
Applicant requests that the Examiner contact the undersigned representative before issuing a subsequent Action.

Respectfully Submitted,

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